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**IN THE DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS**

JOHN BRADY BARRINEAU,)
)
Plaintiff,)
vs.)
)
PRO MARINE TECHNOLOGY,)
CABRAS MARINE CORPORATION,)
KENNETH COLLARD and CHIE N.)
COLLARD)
)
Defendants.)

CIVIL ACTION NO. 05-0028

**DEFENDANT PRO MARINE
TECHNOLOGY ANSWER TO FIRST
AMENDED COMPLAINT**

CABRAS MARINE CORPORATION,)
)
Cross-Claim Plaintiff,)
vs.)
)
PROMARINE TECHNOLOGY,)
)
Cross-Claim Defendant.)

Comes Now **PRO MARINE TECHNOLOGY** (hereinafter
"PMT"), one of the Defendants in the above-styled and

1 numbered cause, by and through counsel, and answers the
2 Plaintiff's First Amended Complaint ("Complaint") as
3 follows:

4 **AS TO THE PARTIES**

5 1. PMT is without knowledge or information
6 sufficient to form a belief as to the truth of the
7 allegations contained in paragraph 1 of the Complaint, and
8 on that basis denies the same.
9

10 2. PMT is without knowledge or information
11 sufficient to form a belief as to the truth of the
12 allegations contained in paragraph 2 of the Complaint, and
13 on that basis denies the same.
14

15 3. Responding to the allegations contained in
16 paragraph 3, PMT admits that it is a corporation organized
17 pursuant to the laws of Guam, but denies the remainder of
18 the allegations contained therein.
19

20 4. PMT is without knowledge or information
21 sufficient to form a belief as to the truth of the
22 allegations contained in paragraph 4 of the Complaint, and
23 on that basis denies the same.
24

25 5. PMT admits the allegations contained in paragraph
26 5 of the Complaint.

1 6. PMT admits the allegations contained in paragraph
2 6 of the Complaint.

3 7. PMT is without knowledge or information
4 sufficient to form a belief as to the truth of the
5 allegations contained in paragraph 7 of the Complaint, and
6 on that basis denies the same.
7

8 8. PMT is without knowledge or information
9 sufficient to form a belief as to the truth of the
10 allegations contained in paragraph 8 of the Complaint, and
11 on that basis denies the same.
12

13 **AS TO JURISDICTION AND JURY TRIAL**

14 9. The allegations contained in paragraph 9 of the
15 Complaint are conclusions of law, for which no response is
16 required; to the extent that they are deemed allegations of
17 fact, PMT is without knowledge or information sufficient to
18 form a belief as to the truth of the allegations contained
19 therein, and on that basis denies the same.
20

21 10. The allegations contained in paragraph 10 of the
22 Complaint are conclusions of law, for which no response is
23 required; to the extent that they are deemed allegations of
24 fact, PMT is without knowledge or information sufficient to
25
26

1 form a belief as to the truth of the allegations contained
2 therein, and on that basis denies the same.

3 11. The allegations contained in paragraph 11 of the
4 Complaint are conclusions of law, for which no response is
5 required; to the extent that they are deemed allegations of
6 fact, PMT is without knowledge or information sufficient to
7 form a belief as to the truth of the allegations contained
8 therein, and on that basis denies the same.
9

10 12. The allegations contained in paragraph 12 of the
11 Complaint are conclusions of law, for which no response is
12 required; to the extent that they are deemed allegations of
13 fact, PMT is without knowledge or information sufficient to
14 form a belief as to the truth of the allegations contained
15 therein, and on that basis denies the same.
16
17

18 13. The allegations contained in paragraph 13 of the
19 Complaint are conclusions of law, for which no response is
20 required; to the extent that they are deemed allegations of
21 fact, PMT is without knowledge or information sufficient to
22 form a belief as to the truth of the allegations contained
23 therein, and on that basis denies the same.
24

25 14. The allegations contained in paragraph 14 of the
26 Complaint are conclusions of law, for which no response is

1 required; to the extent that they are deemed allegations of
2 fact, PMT is without knowledge or information sufficient to
3 form a belief as to the truth of the allegations contained
4 therein, and on that basis denies the same.

5
6 **AS TO THE FACTS**

7 15. The allegations contained in paragraph 15 of the
8 Complaint are conclusions of law, for which no response is
9 required; to the extent that they are deemed allegations of
10 fact, PMT is without knowledge or information sufficient to
11 form a belief as to the truth of the allegations contained
12 therein, and on that basis denies the same.

13
14 16. Responding to the allegations contained in
15 paragraph 16, PMT admits that it employed Plaintiff as a
16 diver and diver tender, but denies the remainder of the
17 allegations set forth therein.

18
19 17. Responding to the allegations contained in
20 paragraph 17, PMT admits that it was the charterer of the
21 M/V Cajun, but is without sufficient knowledge or
22 information to form a belief as to the truth of the
23 allegations that the M/V Cajun was a US flagged vessel
24 which was built to transport goods or passengers on
25 navigable waters, and on that basis denies the same.
26

1 18. PMT admits the allegations contained in paragraph
2 18 of the Complaint.

3 19. Responding to the allegations contained in
4 paragraph 19 of the Complaint, PMT admits that the mission
5 of the M/V Cajun was to transport Plaintiff and others to
6 and from the M/V Hauge, but is without sufficient knowledge
7 or information to understand or respond to the phrase "used
8 the M/V Cajun to complete the M/V Hauge hull cleaning", and
9 on that basis denies the same.
10

11 20. Responding to the allegations contained in
12 paragraph 20 of the Complaint, PMT admits that the M/V
13 Cajun was used as a dive platform for Plaintiff and others,
14 admits that all equipment necessary to complete the
15 underwater mission of scrubbing the hull of the M/V Hauge,
16 including the air supply used for Plaintiff Barrineau's
17 dive, were located on the deck of the M/V Cajun, but denies
18 the remainder of the allegations contained therein.
19
20

21 21. PMT admits the allegations contained in paragraph
22 21 of the Complaint.
23

24 22. Responding to the allegations contained in
25 paragraph 22, PMT denies that Plaintiff assisted with
26 mooring lines and other onboard duties, but that it is

1 without sufficient knowledge or information to form a
2 belief as to truth of the allegations of the depth to which
3 Plaintiff submerged and that he began scrubbing the hull of
4 the M/V Cajun with a hydraulic scrubber, and on that basis
5 denies the same, but admits the remainder of the
6 allegations contained therein.
7

8 23. Responding to the allegations contained in
9 paragraph 23 of the Complaint, PMT admits that Plaintiff
10 Barrineau's air supply was turned off for a brief period by
11 someone aboard the M/V Cajun, but is without sufficient
12 knowledge or information to form a belief as truth of the
13 remainder of the allegations contained therein, and on that
14 basis denies the same.
15

16 24. PMT is without sufficient knowledge or
17 information to form a belief as to the truth of the
18 allegations contained in paragraph 24 of the Complaint, and
19 on that basis denies the same.
20

21 25. PMT is without sufficient knowledge or
22 information to form a belief as to the truth of the
23 allegations contained in paragraph 25 of the Complaint, and
24 on that basis denies the same.
25
26

1 26. PMT is without sufficient knowledge or
2 information to form a belief as to the truth of the
3 allegations contained in paragraph 26 of the Complaint, and
4 on that basis denies the same.

5 27. PMT denies the allegations contained in paragraph
6 27 of the Complaint.

7 28. Responding to the allegations in paragraph 28 of
8 the Complaint, PMT admits that the M/V Cajun was on
9 navigable waters, but denies the remaining allegations
10 contained therein.

11 29. Responding to the allegations in paragraph 29 of
12 the Complaint, PMT admits that when Plaintiff entered the
13 water he was acting within the course and scope of his
14 employment, but is without sufficient knowledge or
15 information to form a belief as to truth of the remainder
16 of the allegations set forth therein, and on that basis
17 denies the same.

18 30. The allegations contained in paragraph 30 of the
19 Complaint are conclusions of law, for which no response is
20 required; to the extent that they are deemed allegations of
21 fact, PMT is without knowledge or information sufficient to
22

1 form a belief as to the truth of the allegations contained
2 therein, and on that basis denies the same.

3 31. The allegations contained in paragraph 31 of the
4 Complaint are conclusions of law, for which no response is
5 required; to the extent that they are deemed allegations of
6 fact, PMT is without knowledge or information sufficient to
7 form a belief as to the truth of the allegations contained
8 therein, and on that basis denies the same.
9

10 32. The allegations contained in paragraph 32 of the
11 Complaint are conclusions of law, for which no response is
12 required; to the extent that they are deemed allegations of
13 fact, PMT is without knowledge or information sufficient to
14 form a belief as to the truth of the allegations contained
15 therein, and on that basis denies the same.
16
17

18 **AS TO COUNT 1: JONES ACT NEGLIGENCE**

19 33. PMT reasserts and incorporates by reference its
20 responses to paragraphs 1 through 32 of the Complaint,
21 inclusive, as though fully set forth herein in response to
22 paragraph 33 of the Complaint.
23

24 34. The allegations contained in paragraph 34 of the
25 Complaint are conclusions of law, for which no response is
26 required; to the extent that they are deemed allegations of

1 fact, PMT is without knowledge or information sufficient to
2 form a belief as to the truth of the allegations contained
3 therein, and on that basis denies the same.

4 35. The allegations contained in paragraph 35 of the
5 Complaint are conclusions of law, for which no response is
6 required.
7

8 36. The allegations contained in paragraph 36 of the
9 Complaint are conclusions of law, for which no response is
10 required.
11

12 37. The allegations contained in paragraph 37 of the
13 Complaint are conclusions of law, for which no response is
14 required.
15

16 38. The allegations contained in paragraph 38 of the
17 Complaint are conclusions of law, for which no response is
18 required.
19

20 39. The allegations contained in paragraph 39 of the
21 Complaint are conclusions of law, for which no response is
22 required.
23

24 40. The allegations contained in paragraph 40 of the
25 Complaint are conclusions of law, for which no response is
26 required.

1 41. PMT denies the allegations contained in paragraph
2 41 of the Complaint.

3 42. PMT denies the allegations contained in paragraph
4 42 of the Complaint.

5 43. PMT denies the allegations contained in paragraph
6 43 of the Complaint.

7
8 44. Responding to the allegations set forth in
9 paragraph 44 of the Complaint, PMT denies that the air
10 supply and controls were within its exclusive control. The
11 remaining allegations contained in paragraph 44 of the
12 Complaint are conclusions of law for which no response is
13 required; to the extent that they are deemed allegations of
14 fact, PMT denies the same.
15

16
17 45. Responding to the allegations contained in
18 paragraph 45 of the Complaint, PMT admits the first
19 sentence thereof, but denies the remaining allegations
20 contained therein.
21

22 46. PMT denies the allegations contained in paragraph
23 46 of the Complaint.

24 **AS TO COUNT II: UNSEAWORTHINESS**

25 47. PMT reasserts and incorporates by reference its
26 responses to paragraphs 1 through 46 of the Complaint,

1 inclusive, as though fully set forth herein in response to
2 paragraph 47 of the Complaint.

3 48. PMT is without knowledge or information
4 sufficient to form a belief as to the truth of the
5 allegations contained in paragraph 48 of the Complaint, and
6 on that basis denies the same.
7

8 49. PMT is without knowledge or information
9 sufficient to form a belief as to the truth of the
10 allegations contained in paragraph 49 of the Complaint, and
11 on that basis denies the same.
12

13 **AS TO COUNT III: MAINTENANCE AND CURE/WAGES**

14 50. The allegations contained in paragraph 50 of the
15 Complaint are conclusions of law, for which no response is
16 required; to the extent that they are deemed allegations of
17 fact, PMT is without knowledge or information sufficient to
18 form a belief as to the truth of the allegations contained
19 therein, and on that basis denies the same.
20

21 51. PMT reasserts and incorporates by reference its
22 responses to paragraphs 1 through 50 of the Complaint,
23 inclusive, as though fully set forth herein in response to
24 paragraph 51 of the Complaint.
25
26

1 52. PMT denies the allegations contained in paragraph
2 52 of the Complaint.

3 53. PMT denies the allegations contained in paragraph
4 53 of the Complaint.

5 54. Responding to the allegations contained in
6 paragraph 54 of the Complaint, PMT admits that it has not
7 paid maintenance or cure to Plaintiff, but denies that any
8 is owed.
9

10 55. PMT denies the allegations contained in paragraph
11 55 of the Complaint.
12

13 56. PMT denies the allegations contained in paragraph
14 56 of the Complaint.
15

16 **AS TO COUNT IV: NEGLIGENCE**

17 57. PMT reasserts and incorporates by reference its
18 responses to paragraphs 1 through 56 of the Complaint,
19 inclusive, as though fully set forth herein in response to
20 paragraph 57 of the Complaint.
21

22 58. The allegations contained in paragraph 58 of the
23 Complaint are conclusions of law, for which no response is
24 required; to the extent that they are deemed allegations of
25 fact, PMT is without knowledge or information sufficient to
26

1 form a belief as to the truth of the allegations contained
2 therein, and on that basis denies the same.

3 59. PMT denies the allegations contained in paragraph
4 59 of the Complaint.

5 60. PMT denies the allegations contained in paragraph
6 60 of the Complaint.

7 61. PMT denies the allegations contained in paragraph
8 61 of the Complaint.

9
10 **AS TO COUNT V: NEGLIGENCE PER SE**

11 62. PMT reasserts and incorporates by reference its
12 responses to paragraphs 1 through 61 of the Complaint,
13 inclusive, as though fully set forth herein in response to
14 paragraph 62 of the Complaint.

15 63. PMT denies the allegations set forth in paragraph
16 63 of the Complaint.

17 64. PMT denies the allegations set forth in paragraph
18 64 of the Complaint.

19 65. PMT denies the allegations set forth in paragraph
20 65 of the Complaint.

21 66. PMT denies the allegations contained in paragraph
22 66 of the Complaint.

AS TO COUNT VI: NEGLIGENCE – RES IPSA LOQUITUR

1
2 67. PMT reasserts and incorporates by reference its
3 responses to paragraphs 1 through 66 of the Complaint,
4 inclusive, as though fully set forth herein in response to
5 paragraph 67 of the Complaint.
6

7 68. PMT denies the allegations contained in paragraph
8 68 of the Complaint.
9

AFFIRMATIVE DEFENSES

10 1. Plaintiff's Complaint fails to state a claim
11 against PMT upon which relief may be granted.
12

13 2. Plaintiff was negligent and careless in and about
14 the matters set forth in the Complaint and his lack of due
15 care and caution caused or contributed to his alleged
16 injuries and damages, and any damages recovered should be
17 reduced accordingly.
18

19 3. Plaintiff has failed to mitigate his damages.

20 4. Plaintiff's claims are barred or should be
21 reduced due to his contributory negligence.
22

23 5. Plaintiff's exclusive remedy lies in Worker's
24 Compensation.
25

26 6. Plaintiff was not a Jones Act seaman at the time
of the incident.

1 7. To the extent that Plaintiff has an
2 administrative remedy, he has failed to exhaust it.

3 8. The court lacks *in rem* jurisdiction over the M/V
4 Cajun.

5 9. The court lacks personal jurisdiction over PMT.

6 10. The court lacks subject matter jurisdiction.

7 11. Plaintiff is not entitled to punitive damages.

8 12. Plaintiff is not entitled to maintain a claim for
9 negligence in an action in admiralty.
10

11 13. The court lacks subject matter jurisdiction over
12 Plaintiff's negligence claim.
13

14 14. The M/V Cajun and all of its associated barges
15 and platforms were seaworthy.
16

17 15. Plaintiff has incurred no maintenance and cure
18 expenses.

19 16. Plaintiff is not entitled to a trial by jury.

20 17. Venue in this district is improper.

21 18. This lawsuit is subject to the doctrine of *forum*
22 *non conveniens*.
23

24 19. PMT reserves the right to assert further
25 affirmative defenses as may appear as discovery proceeds
26

1 **WHEREFORE,** Defendant **PRO MARINE TECHNOLOGY** herein prays
2 for relief as follows:

3 1. That Plaintiff take nothing against PMT by way of
4 his Complaint;

5 2. That Plaintiff's Complaint be dismissed with
6 prejudice as to PMT;

7 3. That PMT be awarded its costs in defending this
8 action; and
9

10 4. For such other and further relief as the Court
11 may deem just and proper.
12

13
14 **THOMAS E. CLIFFORD, Bar No. F0210**
15 **Attorney at Law**

16 **BLAIR STERLING JOHNSON**
17 **MOODY MARTINEZ & LEON GUERRERO**
18 **A PROFESSIONAL CORPORATION**

19 DATED: APRIL 18, 2006

20 BY: 
21 **THOMAS C. STERLING, Bar No. F0127**
22 Attorneys for Defendant Pro Marine Technology

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